

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SEAN BEST, :
Petitioner, : ANSWER IN OPPOSITION
: TO THE PETITION FOR A
: WRIT OF HABEAS CORPUS
- against - :
THOMAS GRIFFIN, Superintendent, : 15-CV-4073 (CM)(AJP)
Green Haven Correctional Facility, :
Respondent. :
-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PRISCILLA STEWARD, an attorney admitted to practice in the State of New York, and before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

1. I am an Assistant Attorney General, of counsel to Eric T. Schneiderman, the Attorney General of the State of New York. I submit this answer and the accompanying memorandum of law in opposition to the petition for a writ of habeas corpus, filed on May 27, 2015, by Siobhan Briley, Esq., on behalf of Sean Best (“petitioner”). Petitioner challenges a January 26, 2010 judgment of the New York County Supreme Court, convicting him, upon his guilty plea, of Attempted Assault in the First Degree (Penal Law § 110.00/120.10(1)), and sentencing him, as a second felony offender, to a determinate prison term of eight years, to be followed by a five-year term of post-release supervision. On October 9, 2012, the Appellate Division, First Department, affirmed the judgment of

conviction, and on December 4, 2012, the New York Court of Appeals denied petitioner's application for leave to appeal. *People v. Best*, 99 A.D.3d 493 (1st Dep't), *lv. denied*, 20 N.Y.3d 985 (2012).

2. By agreement with the New York County District Attorney's Office, the Attorney General of the State of New York will represent respondent. I make the statements in this answer upon information and belief, based on my review of the records forwarded to the Attorney General's Office by the District Attorney's Office.

3. Respondent Supt. Thomas Griffin, by his attorney, Eric T. Schneiderman, Attorney General of the State of New York, Priscilla Steward, Assistant Attorney General, of counsel, answers the petition as follows:

- (a) Admits the allegation in paragraph 1;
- (b) Denies the allegation in paragraph 2;
- (c) Admits the allegations in paragraph 3;
- (d) Denies the allegations in paragraphs 4 and 5;
- (e) Admits the allegations in paragraphs 6-9;
- (f) Denies the allegations in paragraphs 11-23;
- (g) Denies knowledge or information sufficient to respond to the allegations in paragraph 24;
- (h) Admits the allegation in paragraph 25;
- (i) Denies the allegations in paragraph 26;
- (j) Denies knowledge or information sufficient to respond to the allegation in paragraph 27.

Defenses

4. As explained in respondent's memorandum of law, the habeas petition fails to state a claim upon which relief can be granted. In his petition for habeas relief, petitioner argues that: (1) petitioner's guilty plea was not knowingly and voluntarily entered because the trial court failed to ascertain his competence to stand trial and failed to allow petitioner to explore the possibility of a psychiatric defense; and (2) his trial counsel was ineffective for failing to investigate petitioner's history of mental illness to determine if he had a viable psychiatric defense (Petition at 3-5).

5. Petitioner's first claim is meritless because the record establishes that nothing in petitioner's behavior gave either the court or his attorney any reason to doubt petitioner's ability to validly enter a guilty plea. The record also shows that petitioner waived his right to a trial and to present any defense to the charges against him when he knowingly and voluntarily entered his guilty plea. Petitioner's second claim is barred from habeas review pursuant to *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). It is meritless in any event, as counsel's failure to investigate petitioner's history of mental illness was due to petitioner's failure to alert his attorney to that circumstance until the day that petitioner pleaded guilty.

6. A separately bound record of petitioner's state court conviction and respondent's supporting memorandum of law are being filed with the Clerk of the Court.

WHEREFORE, and for the reasons set forth in the accompanying memorandum of law, the petition for a writ of habeas corpus should be denied and no certificate of appealability should be issued.

/s/ Priscilla Steward
PRISCILLA STEWARD (PS 1931)
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(212) 416-8737

Dated: August 6, 2015
New York, New York

To: Honorable Andrew J. Peck
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007

Siobhan Briley, Esq.
Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019

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: Respondent. :
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DECLARATION OF SERVICE

PRISCILLA STEWARD, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on August 6, 2015, she served respondent's memorandum of law and answer in opposition to the petition for a writ of habeas corpus, along with the state court record on petitioner's counsel, Siobhan Briley, Esq., by filing it on the Court's Electronic Filing System.

/s/ Priscilla Steward
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Executed on August 6, 2015